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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 11.11.2020

+ RFA 272/2020 and CM 28819/2020, 28820/2020 and 28818/2020

PRASHANT GOYAL

..... Appellant

Through: Mr. Rajiv Bajaj, Mr. Saurabh Soni
and Ms. Mannat Singh, Advocates

versus

INDRANIL WADHWA

..... Respondent

Through: Mr. Rahul Goyal, Advocate with
Respondent in person

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

JYOTI SINGH, J. (ORAL)

1. Present Appeal has been filed against the judgment dated 07.10.2020 passed by the Trial Court in Suit No.308/2020 whereby the Trial Court has partly decreed the suit and passed a decree of possession in favour of the Plaintiff/Respondent and against the Defendant/Appellant herein with respect to property bearing No.A-75, Ground Floor, Chittranjan Park, New Delhi.

2. Short but relevant facts are that the Plaintiff/Respondent herein claiming to be the owner/landlord of the suit property filed a suit for possession and recovery of arrears of rent and charges for amenities alongwith *mesne profit* and damages with future and *pendente lite* interest. The Plaintiff/Respondent alleged that the Defendant/Appellant

entered into a lease agreement for the property for a period of 12 months at a rent of Rs.40,000/- per month in addition to the utility charges and the lease deed was registered on 11.09.2013. The lease was extended by fresh lease deeds in 2014 and 2015 whereby the rent was increased to Rs.42,000/- per month.

3. As per the Respondent, the lease deed ended by efflux of time on 31.08.2016 and the tenancy continued on month to month basis. Respondent alleged that the Appellant began defaulting in payment of rent from July, 2016 and eventually stopped paying the rent with effect from June, 2019.

4. The Respondent terminated the lease by serving on the Appellant a legal notice dated 24.06.2020 under Section 106 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the Act'). The arrears of rent as per the Respondent amounted to Rs.11,43,000/- upto 30.06.2020 upon which interest at the rate of 18% p.a. accrued to the Respondent alongwith holding charges of Rs.3,000/- per day, calculated from 11.07.2020 till the date the suit was filed.

5. Appellant entered appearance in the suit and filed a written statement alongwith reply to the application under Order XVA of the CPC taking a defence that the Respondent had not approached the Court with clean hands. The Appellant disputed the landlord-tenant relationship as it was a practice between the parties to register a lease deed as was done for the deeds executed for the years 2013-2015. Post 2015 no lease deed was executed as the Respondent had offered to sell the property and had acted on this offer by handing over possession to the Appellant.

Appellant agreed to purchase the property for a total sale consideration of Rs.1.3 Crores. It was orally agreed that the Appellant will initially pay Rs.30 Lakhs and the remaining shall be paid at the time of executing the sale deed. Between August 2015 and July 2019 Respondent had been accepting the alleged rent in his account as well as in cash which is reflected in bank statement and calculation sheet placed on record before the Trial Court.

6. As per the chronology of dates, matter was listed for arguments on 28.09.2020 before the Trial Court on the Application under Order XVA Rule 1 CPC and the Court also heard arguments on the issue of passing judgement without holding a trial as per Order XII Rule 6 read with Order XIV Rule 1(6) CPC. On 07.10.2020 the Trial Court partly decreed the suit for recovery of possession of the property and the Appellant was directed to hand over vacant possession to the Respondent within 30 days.

7. Learned counsel for the Appellant contends that mere admission of landlord-tenant relationship by the Appellant cannot take away the right of the Appellant to contest the suit and the Trial Court ought to have proceeded with the trial on the defence set up by the Appellant. It is also argued that the Trial Court failed to appreciate that the Appellant had disputed the landlord-tenant relationship, as after 2015 no lease deeds were executed owing to the fact that the Respondent had offered to sell the property and this is substantiated by the handing over of possession to the Appellant.

8. Learned counsel further contends that the defence of the Appellant was supported by the contents of the plaint itself as the Appellant had regularly paid the agreed rent till the last month of the registered lease deed i.e August 2016, as per calculation sheet placed on record with the plaint. Respondent had himself admitted in the legal notice dated 24.06.2020 as well as the plaint that he had to relocate to Maharashtra and therefore it was a natural presumption that he was intending to dispose of his property. Trial Court also failed to appreciate that between August 2016 to July 2019 Respondent accepted the rent in his account as well as cash, which is reflected in the bank statement and the calculation sheet placed on record. Onus to prove that the Appellant was allowed to occupy the property as a tenant was squarely on the Respondent, which he failed to discharge. Respondent did not even prove why after August 2016 he did not enter into a registered lease deed as per past practice and why no objections were raised on late payment of the alleged rent until March, 2019.

9. Learned counsel contends that it is a settled law that in a case where a defendant raises objections which go to the root of the case, it would not be appropriate to exercise discretion under Order XII Rule 6 CPC and more importantly there were no clear admissions on the part of the Appellant. Reliance is placed on the judgment of the Supreme Court in ***Satish Chander Ahuja vs. Sneha Ahuja* 2020 SCC OnLine SC 841** where the Court has held that it is discretionary for a Court to pass judgment on admission and the discretion has to be exercised keeping in mind that a judgment without trial permanently denies any remedy to the

Defendant by way of an appeal on merits and unless the admission is clear, unambiguous and unconditional the discretion should not be exercised.

10. Learned counsel for the Respondent has defended the judgment by reiterating the arguments made before the Trial Court and submits that the Trial Court has rightly passed the decree as the landlord-tenant relationship was admitted, the rent of the property was admittedly over Rs.3,500/- and a legal notice dated 24.06.2020 had been issued by the Respondent under Section 106 of the Act terminating the month to month tenancy.

11. I have heard learned counsel for the Appellant and learned counsel for the Respondent.

12. I have perused the judgment of the Trial Court. Trial Court has decreed the suit on the ground that in the written statement the Appellant admitted payment of rental amount from time to time and did not claim that the status of the Appellant was severed as a tenant completely. Even assuming that the Appellant had entered into an agreement to sell for purchasing the suit property from the Respondent and had paid part consideration, at best, the Appellant could rely on the agreement for two purposes i.e. (i) file a suit for specific performance seeking execution of the sale deed; and (ii) claim protection under Section 53A of the Act. It was also an admitted case that there was no written Agreement to Sell ever executed between the parties and the defence of the Appellant was based on an oral agreement. Based on the amendment to Section 17 of the Registration Act, whereby the Registration of an Agreement to Sell has

been made compulsory as well as amendment to Section 53A of the Act and the Indian Stamp Act, 1899, the Trial Court concluded that in the absence of a registered Agreement to Sell the Appellant could not claim protection under Section 53A of the Act. Based on the proposition of law laid down in ***Sudhir Sabharwal vs. Rajesh Pruthi* 2014 AIR CC 2850** by this Court that mere Agreement to Sell of immovable property will not terminate the landlord-tenant relationship, the Trial Court was of the view that no purpose would be served to put the matter to trial and passed the judgment, noting that while there was no admission, however, if the defendant has no legal defence, then under Order XIV Rule 1(6) CPC, judgment can be straightaway passed.

13. For the sake of completeness I may note that Respondent herein being the Plaintiff filed a suit before the Trial Court seeking the following reliefs :

“A. a decree for recovery of peaceful and vacant possession of House No. A-75, Ground Floor, Chittranjan Park, New Delhi – 110019 kindly be passed in favour of the plaintiff and against the defendant.

B. a decree for recovery of utility charges such as electricity, water charges and RWA charges as may be pending till the date of handing over of peaceful vacant possession of House No. A-75, Ground Floor, Chittranjan Park, New Delhi – 110019 kindly be passed in favour of the plaintiff and against the defendant.

C. Recovery of Rs. 11,84,000/- amounting to rental till 31/07/2020, along with interests accruing due to no payment of the rentals till date of filing of the

plaint, along with future interest be passed in favour of the plaintiff and against the defendant.

D. Recovery of Rs. 60,000/- amounting as mesne profit @ Rs. 3,000/- per day from 10/07/2020 for unauthorized use of the said property till the peaceful vacant possession is handed over to the plaintiff, along with interests accruing due to non-payment of the mesne profits till date of handing over of physical vacant possession of House No. A-75, Ground Floor, Chittranjan Park, New Delhi – 110019 be passed in favour of the plaintiff and against the defendant.

E. Costs of the suit may be awarded in favour of the plaintiff and against the defendant.”

14. Appellant in the written statement admitted that he was inducted as a tenant in the year 2013 vide a registered lease deed dated 09.09.2013 and also admitted the renewal of the lease till 2015. Appellant, however, set up an oral agreement to sell and also pleaded payment of Rs.30 Lakhs towards part consideration of the sale price.

15. The issue that arises before this Court is as to whether the Appellant could claim retention of the suit property on the plea of an oral Agreement to Sell.

16. The answer to the above question in my view can only be against the Appellant. The legal position on this aspect is no longer *res integra*. Section 17 of the Registration Act was amended by the Registration and Other Related Laws (Amendment) Act, 2001, Act No.48 of 2001, by insertion of Section 1(A) therein and by virtue of the Amendment,

registration of an Agreement to Sell has been made compulsory with effect from 24.09.2001. Section 17(1-A) reads as follows:-

“Section (1A). The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement (i.e. w.e.f. 24.09.2001), then, they shall have no effect for the purposes of the said Section 53A.”

17. Therefore, a buyer cannot avail the benefit of Section 53A of the Act if the agreement to sell is not registered. When a tenant enters into an agreement to sell for buying the tenanted premises but the agreement to sell is not in conformity with law, the relationship continues as landlord-tenant and while the tenant can seek specific performance, but he acquires no right to retain possession, till a sale deed is registered in his favour. This has been clearly held by this Court in **Sudhir Sabharwal (supra)**. The relevant portion of which is as follows :-

“The plaintiff had filed a suit seeking decree of possession against the defendant in respect of the premises in dispute. The application sought decree on the basis of admissions made by the defendant in his written statement. The plaintiff is a landlord of property No. G-27/4, Rajouri Garden, New Delhi and its ground floor was let out to the defendant at the rent of Rs. 25,000/- per month. The plaintiff issued notice to the tenant on 29.6.2011 followed by a reminder on 11.1.2012 asking them to vacate the premises. But there was no compliance of the

plaintiff's request therefore the suit was filed to seek possession as well as damages. The defendant had admitted the enhanced rent of Rs. 27,500/- from 1.7.2011 and that the tenancy period had been extended by another seven months by the plaintiff. But he also claimed in the written statement that the plaintiff had agreed to sell the rental premises to the defendant for a total consideration of Rs. 2,10,00,000/- for which the defendant had paid bayana/advance payment of Rs. 21,20,000/- i.e. 10% of the total sale consideration and that the plaintiff had duly executed receipt in this regard.

What follows is that even if the /defendant were to succeed in his suit for specific performance of agreement to sell, till the execution of a conveyance deed in pursuance to the decree, if any, in favour of the defendant, the defendant has no ground in law to save his possession of the premises. The status of the defendant would continue to be as before i.e. of a tenant whose tenancy has been determined.

In view of the legal position that "mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement" and in view of the preceding discussion that "mere agreement of sale will not terminate landlord- tenant relationship unless there is specification to that effect in agreement itself", this Court is of the view defendant has not right to occupy the said property."

18. In ***Shiv Kumar vs. Sumit Gulati***, RSA No.417/2015, decided on 04.12.2015, the Court held that when the defendant claims possession on the basis of an oral agreement to sell, the same cannot be recognized in view of the amended Section 53A of the Act. The same view has been taken by the Courts in other judgments in ***Babita Joshi vs. Dilip Rawat***,

(2015) 219 DLT 697 and ***Kaushal Aggarwal vs. Ashok Malhotra***, CS (OS) 165/2009 decided on 17.02.2009.

19. Significantly in the present case the relationship between the parties as landlord-tenant is an admitted position. It is also admitted that the rent of the premises was over Rs.3,500/- as also that the Respondent terminated the lease by sending a notice under Section 106 of the Act. In view of the said position and in the absence of the alleged oral agreement being registered, the Trial Court has rightly passed a decree for recovery of the suit property and no infirmity can be found. The suit is pending on other reliefs and shall be continued and adjudicated in accordance with law.

20. The appeal is accordingly dismissed. Pending applications are also dismissed.

21. At this stage Mr. Bajaj submits that the Appellant may be permitted some time to vacate the premises as it would be impossible for the Appellant to vacate immediately and find another premises on account of the prevailing circumstances due to Pandemic Covid-19.

22. Mr. Indranil Wadhwa, Respondent is present in Court. Mr. Wadhwa consents to the Appellant vacating the premises within a period of two months from today.

23. Accordingly, it is directed that the Appellant shall vacate the property bearing No.A-75, Ground Floor, Chittranjan Park, New Delhi-110 019 within a period of sixty days from today and hand over the vacant and peaceful possession to the Respondent. Respondent shall pay

the user charges at the agreed rate of Rs.42,000/- per month for the two months that he would occupy the premises.

24. Appellant shall give an undertaking to this effect on an affidavit within a period of seven working days from today. Needless to add that the Appellant shall be bound by the undertaking.

(JYOTI SINGH)
JUDGE

NOVEMBER 11, 2020

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